NO. D-1-GV-08-000669

STATE OF TEXAS, Plaintiff, v. AHCO DIRECT, LLC; AHCO AGENT, LTD., and AHCO CONTRACT SERVICING, LTD., D/B/A MATERNITY CARD and AFFORDABLE HEALTHCARE OPTIONS, et al., Defendants.	§ § § § § § § § § § §	IN THE DISTRICT COURT OF TRAVIS COUNTY, TEXAS 250TH JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came for hearing the above-entitled and numbered cause in which the STATE OF TEXAS ("State" or "Plaintiff"), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and AHCO DIRECT, LLC; AHCO AGENT, LTD.; and AHCO CONTRACT SERVICING, LTD., D/B/A MATERNITY CARD and AFFORDABLE HEALTHCARE OPTIONS; BRIAN JAMES McDONALD; and AARON CHRISTOPHER BOUREN, are Defendants. Through their respective attorneys of record, Plaintiff and Defendants agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

I. STIPULATIONS

The parties agree to the entry of this Judgment and, at their request, the Court finds that:

1. It has jurisdiction over the subject matter of this action.

2. It has jurisdiction over the Defendants.

3. Venue is proper in Travis County, Texas.

4. The activities of Defendants constitute trade and/or commerce.

5. Entry of this judgment is in the public interest.

6. This judgment is non-appealable.

7. Nothing in this judgment in any way affects an individual's cause of action under the DTPA, or any other laws or regulations of this State.

8. The court shall have continuing jurisdiction to enforce this judgment.

9. Defendants acknowledge notice of this permanent injunction and acceptance of the same; therefore no writ need be issued.

II. DEFINITIONS

For the purposes of this Agreed Final Judgment and Permanent Injunction, the following definitions shall apply:

10. "DTPA" shall mean the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41 *et seq.* (Vernon 2002 and Supp. 2009).

11. "Clear and conspicuous" and "Clearly and conspicuously" mean:

    (a) For print communications, the message shall be in a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background against which it appears.

    (b) In communications disseminated orally, the message shall be delivered in a volume and cadence sufficient for an ordinary consumer to comprehend it.

    (c) In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the message shall be presented simultaneously in

both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the message may be made through the same means by which the communication is presented. Any audio message shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual message shall be of a size and shade, with a degree of contrast to the background against which it appears, and shall appear on the screen for a duration and in a location sufficiently noticeable for an ordinary consumer to read and comprehend it. The message shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the message shall be used in any communication.

12. "Defendants' Program" means Defendants' goods and/or services marketed to consumers as providing or giving participating consumers access to any discounts or lowered costs for health-related costs, including the benefit of receiving substantially lowered, reduced or eliminated medical, dental or maternity bills or costs, or similar or related services marketed to consumers by Defendants or a third-party marketer with whom Defendants have entered into a contract.

13. "Discount" means the difference between the amount paid by a consumer who has no contractual relationship with a third-party payor and pays in cash or its equivalent at the time of service, and the amount paid by a consumer who presents the discount health care card at the time of service and pays for the service in cash or its equivalent.

14. "Hyperlink" means a link from a hypertext file to another location or file, typically activated by clicking on an underlined word, statement, or icon.

15. "Mail," "Mailing," and "Mailed" means either by First Class US mail, or electronic mail.

16. "Signing" includes electronic signatures as provided by the Uniform Electronic Transactions Act, TEX. BUS. & COM. CODE ANN., Chapter 43, (Vernon 2002 and Supp. 2009).

17. "Defendants" shall mean Brian James McDonald; Aaron Christopher Bouren; AHCO Direct, LLC; AHCO Agent, Ltd.; AHCO Contract Servicing, Ltd.; their officers; agents; servants; employees; all other persons in active concert or participation with them, whether acting directly or through any person, business entity, limited liability company, trust, corporation, partnership, subsidiary, division, assumed or fictitious business name, or device; and all entities in which they have an ownership interest, serve as officers or directors, have formed, created , are affiliated with, or control, and where such entity is engaged in or assists others engaged in the advertising, promotion, offering for sale, sale or distribution or provision of goods and/or services as described in Paragraph 12 of the Definitions. For purposes of this Final Judgment, an entity shall be considered to be formed, created, affiliated with, or controlled by Defendants if Defendants have a more than 10% ownership of, serve as officers, directors or members of, or share management, ownership, use of facilities, equipment or employees with, an entity.

III. INJUNCTION

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendants shall be permanently enjoined, restrained, and prohibited from engaging in the following conduct:

18. Failing to disclose in a clear and conspicuous manner in all oral and written communications to consumers that Defendants' Programs are not insurance.

19. Using terms of art from insurance in oral and written communications to consumers regarding Defendants' Programs, including but not limited to, the following terms:

    (a) Co-pay(s);

    (a) Benefit(s);

    (b) Pre-existing condition(s);

    (c) Coverage;

    (d) Preferred Provider Organization;

    (e) Claim(s);

    (f) Premium(s); and

    (g) Deductible(s).

20. It shall not be considered a violation of the preceding paragraph 19 if Defendants use an insurance term of art to respond to a consumer's inquiry regarding the term of art, or if it is used to disavow any relationship or similarity between Defendants' Program to insurance; if, in such response:

    (a) Defendants clearly and conspicuously disclose to the consumer that Defendants' Program is not insurance and questions regarding

insurance should be directed to a licensed insurance agent or provider; and

(b) Defendants do not use the term in a manner that could reasonably mislead an individual into believing that the Defendants' Program is health insurance or provides similar coverage.

21. Representing to consumers that Defendants and/or their programs or services have characteristics or benefits which they do not have, including representing that Defendants' Programs offer or directly provide the following products or services to consumers:

(a) Doctor Visits;

(b) Hospital Stays;

(c) Lab Work;

(d) Sonograms;

(e) Anesthesiologist;

(f) Pre-Natal Vitamins;

(g) Newborn Tests and Checkups;

(h) Immunizations;

(i) Prescriptions; or

(j) Any other product or service related to maternity care, unless Defendants do in fact pay the cost of, or directly provide, the product or service.

22. Representing to consumers in any oral or written communications that Defendants' Programs provide or include discounted maternity care, access to

discounted maternity care, ranges of discounts on maternity care, or access to ranges of discounts on maternity care, unless Defendants have a factual basis for those representations.

(a) For purposes of compliance with this Paragraph, the factual basis shall be the difference between the amount paid by a consumer who has no contractual relationship with a third-party payor and pays in cash or its equivalent at the time of service, and the amount paid by a consumer who presents Defendants' Program card at the time of service and pays for the service in cash or its equivalent.

(b) It is a violation of this Paragraph to represent that Defendants' Program will assist consumers in accessing discounts on maternity-related health care costs unless Defendants have written contractual agreements with health care providers for such discounts.

23. Representing to consumers in any oral or written communications that Defendants' services will result in the consumer obtaining a benefit such as substantially lowered, reduced, or eliminated maternity bills or costs, or substantial savings off of the original charge or billed amount on a maternity bill, unless Defendants either:

(a) Have written contractual agreements with providers of maternity care that obligate those providers to accept the "lowered" "reduced," "eliminated," "negotiated," or "audited" maternity bills or costs proposed by Defendants; or

(b) Have six months of documented data that show that at least 60% of the maternity bills or costs lowered, reduced, eliminated, negotiated, or audited by Defendants were accepted by maternity care providers as payment in full of the bill or cost, and include a percentage reduction that is the same as or lower than any represented percentage or percentage range of reduction. For purposes of compliance with this Paragraph, the six months of data shall be the six most recent consecutive months.

(c) It is a violation of this Paragraph to represent a "typical" or "average" savings or reduction amount or range that is not achieved by at least 60% of Defendants' Program members. This prohibition includes the representation of reduced, negotiated, or audited bills or costs that are not within the typical experience of Defendants' Program members, or the representation of reduced, negotiated, or audited bills or costs that were not accepted as payment in full by the maternity care provider.

24. Representing that maternity care providers will accept Defendants' Programs, or representing that consumers can utilize a particular doctor, lab, or hospital with Defendants' Programs, or representing that consumers can utilize "any" doctor, lab, or hospital with Defendants' Programs, or representing that providers in a specific geographic region are available to consumers, unless Defendants have, at some point in the prior three months, confirmed in writing with the maternity care provider regarding whom the representation is made, the following information:

(a) The provider's current name, address, and telephone number;

(b) That the provider is accepting new patients; and

(c) Defendants have a written contractual agreement with the provider that indicates that such provider has agreed to accept Defendants' members and bill those members for maternity care services according to a fee schedule that has been disclosed to Defendants' members, or Defendants have a written contractual agreement with the provider that obligates such provider to negotiate maternity costs or bills with Defendants, or Defendants have a written contractual agreement with provider that obligates such provider to accept Defendants' audited bills or costs as payment in full for the goods or services provided by the provider to Defendants' members.

(d) It is a violation of this Paragraph to represent that consumers can utilize "any" doctor, lab, or hospital with Defendants' Programs, unless Defendants have written contractual agreements with all doctors, labs, and hospitals that comply with the requirements of section "c" of this provision.

(e) This Paragraph does not prohibit Defendants from negotiating agreements with providers to provide maternity services to individual consumers on a case-by-case basis, and informing the consumer of the agreement with the consumer's provider once it is negotiated.

25. Representing to consumers that there are maternity care providers who participate in the program in the consumer's local area unless Defendants have made a list of all providers, whom Defendants have confirmed will participate as set forth in Paragraph "24" above, reasonably available for inspection by consumers prior to any purchase.

26. Instructing consumers not to preregister with the hospital where the consumer intends to deliver their baby; provided, however, that it will not be a violation of this provision for Defendants to request that the consumer contact Defendants prior to preregistering, and Defendants clearly and conspicuously disclose the following to consumers:

(a) That the consumer may forego price reductions available to consumers who pre-register and pre-pay hospital delivery costs if the consumer fails to preregister with the hospital and inform the hospital that the consumer is an uninsured, self-pay patient; and

(b) That doctors and hospitals may offer price reductions to uninsured self-pay patients that are more advantageous to the consumers than the savings available through Defendants' Programs or services.

(c) The disclosures required in "a" and "b" of this provision, above, must be made to the consumer whenever Defendants make representations to consumers regarding preregistration.

(d) When discussing preregistration with consumers, Defendants shall not make misleading statements or representations regarding the effect of preregistration to the consumer, including but not limited

to, representing that preregistration will result in the hospital requiring immediate prepayment of all delivery costs, or in the hospital's refusal to deliver the consumer's baby if the consumer is unable to immediately pay the full cost of delivery.

27. Representing that Defendants are licensed and/or registered as a Provider Access Organization.

28. Charging a consumer's credit card, drafting or debiting a consumer's bank account, or billing the consumer or collecting payment of any kind from consumers unless Defendants have obtained the consumer's express affirmative consent to purchase Defendants' services or programs. For purposes of compliance with this paragraph, express affirmative consent to purchase must be evidenced by either:

(a) Defendants' receipt of a contract, signed and dated by the consumer ("Service Agreement") agreeing to purchase Defendants' Program; or

(b) An audio recording of the consumer giving express oral authorization ("Authorization") to the terms of the agreement.

(c) In order to be in compliance with this term, the Service Agreement or Authorization must at a minimum include:

i. Clear and conspicuous disclosures of all costs to the consumer of the program; the amount of the debit, charge, or payment; and the date or dates that the debit, charge, or payment will be submitted for payment;

ii. A description in plain and understandable language, clearly and conspicuously disclosing to the consumer the specific products or services which the consumer will receive, together with an identifying name or number of the product or service as advertised on Defendants' websites;

iii. Clear and conspicuous disclosures of any material terms, conditions, and/or restrictions regarding the program, including but not limited to the term of the contract, cancellation policies and procedures, refund policies and procedures, all cancellation fees, termination fees or penalties that consumers may be asked to pay if they terminate the agreement; and

iv. Clear and conspicuous disclosure of the fact that Defendants do not pay any medical expenses on behalf of consumer members; that consumer members are solely responsible for paying their medical expenses directly to the providers of medical services; and that Defendants are not medical providers.

(d) Within two business days of charging a consumer's credit card, drafting or debiting a consumer's bank account, or collecting payment of any kind from a consumer as a result of a telephone sale, Defendants shall send a Service Agreement by mail to the consumer. This Service Agreement shall include all of the

disclosures required by the preceding Paragraph 28(c), and further shall clearly and conspicuously advise the consumer of her right to cancel the agreement for a full refund, less any enrollment fee allowed for by Paragraph 29, below, by stating the following:

"On [date] you agreed on the telephone to the terms of this Service Agreement. For your records, this Service Agreement was mailed to you on [date], and you now have until [date] (10 (ten) business days) to review this Service Agreement, and exercise your right to cancel for a full refund. If you wish to cancel this Service Agreement, you may do so by filling out the attached Cancellation Form, and faxing it to [facsimile number], or by mailing it to [mailing address].

i. The mailing to the consumer shall include a Certificate of Mailing signed by Defendants' employees or agents attesting to the date that the Service Agreement was mailed. Such certifications are subject to the retention policy in the Recordkeeping and Retention Requirement of this Judgment.

ii. All funds collected by Defendants from consumers as a result of telephone sales must be placed in a reserve or escrow account by Defendants until the cancellation period in Paragraph 28(d) has passed.

(e) If a consumer purchases Defendants' services over the Internet, Defendants must provide the consumer with each of the terms of the Service Agreement and the disclosures required by the preceding Paragraph 28(c) by a method that requires the consumer to

acknowledge each disclosure by affirmatively checking a box for each, indicating that the consumer has read and understands the disclosures.

(f) Nothing in Defendants' marketing materials, sales presentations, or websites shall be inconsistent with the material terms disclosed in the Service Agreement.

(g) All programs or service plans which Defendants offer to sell must be listed and identified at Defendants' websites with a unique name or number, and each unique identifying name or number must include a clear and conspicuous hyperlink to the full terms and conditions of the Service Agreement for each such program or service plan. The Service Agreement must include the disclosures required by the preceding Paragraph 28(c).

29. Assessing a "one-time," "enrollment," "administrative," or "sign-up" fee unless and until the following conditions are met:

(a) Any such fee, and its material terms and conditions, are clearly and conspicuously disclosed to consumers before assessing the fee. Such disclosures shall include, but not be limited to, the following:

i. The amount of the fee;

ii. The purpose of the fee;

iii. If refundable, a clear description of the steps consumers must take to receive the refund; and

iv. If non-refundable, a clear and conspicuous disclosure of that fact.

(b) Any such fee must be in a nominal amount, related to costs incurred by Defendants in enrolling consumers in their programs. The total amount of the enrollment fee may not exceed $60.00, unless TEX. HEALTH & SAFETY CODE § 76.001 *et seq.*, or, after September 1, 2009, the Texas Insurance Code, Subtitle C, Title 5, Chapter 562, Section 562.001 *et seq.*, provide for a higher amount.

30. Representing that Defendants offer a "money-back," "satisfaction," or "ironclad" guarantee unless all monies paid by consumers to Defendants, including but not limited to enrollment fees and monthly fees, are refundable under the guarantee.

(a) Any "money-back," "satisfaction," or "ironclad" guarantee must be available to any consumer who expresses dissatisfaction with Defendants' Program and requests a refund under the guarantee.

31. Failing to honor the guarantee.

32. Assessing a cancellation fee.

33. Requiring consumers to cancel the program in writing unless Defendants clearly and conspicuously disclose in all written and oral communications to consumers that written cancellations are required. Such disclosures shall include:

(a) The mailing address to which written cancellations should be sent;

(b) The fax number to which written cancellations should be sent, if facsimile notification is an accepted means of cancellation; and

(c) That cancellations must be received from the consumer who originally enrolled in Defendants' program.

34. Failing to cancel the program for a consumer if the consumer has provided written cancellation notice by mail.

(a) If the consumer was sold the program prior to clear notice of cancellation requirements being given, failing to cancel the program for the consumer if the consumer has communicated, in writing, that he or she wishes to cancel.

35. Charging a consumer's credit card, drafting or debiting a consumer's bank account, or billing the consumer after the effective date of cancellation, unless:

(a) Stopping a scheduled charge, draft, debit, or bill is not practicable; and

(b) Defendants remove the charge, credit back the bank account, or send a revised bill within 3 days of the effective date of cancellation as defined in (c) below.

(c) The effective date of cancellation shall be the date Defendants, or any entities marketing or selling any of Defendants' Programs, receive the cancellation in the case of facsimile cancellations, the date the electronic mail is sent by the consumer in the case of email cancellations, and the date the cancellation is postmarked in the case of cancellations sent by First Class mail.

36. Failing to disclose to a consumer who has orally communicated an intent or desire to cancel or who has otherwise failed to comply with Defendants' requirements for proper cancellation that the consumer's method of cancellation was not effective and that a written cancellation is required; further, within two business

days after receipt of the ineffective cancellation attempt, Defendants must mail the consumer specific and correct instructions for proper cancellation.

37. Representing that Defendants are offering the program at a special price for a limited time unless:

(a) The "special price" represents a price which is lower than the customary fee for the program;

(b) The "special price" is available for a limited time;

(c) The expiration date of the "special price" offer is clearly and conspicuously disclosed; and

(d) All material terms, conditions, and restrictions regarding the offer are clearly and conspicuously disclosed in all communications of the offer to consumers.

38. Using customer testimonials, unless:

(a) All representations regarding Defendants' Programs have a factual basis and do not contain representations which would be deceptive or could not be substantiated if made directly by Defendants;

(b) The first name and state of the person making the testimonial is included in all communications of the testimonial to consumers;

(c) All material relationships, whether current or past, between Defendants and the person making the testimonial are clearly and conspicuously disclosed in all oral and written communications of the testimonial to consumers;

(d) All representations in the testimonial regarding price reductions, savings, and/or discounts received on maternity services are in reference to price reductions, savings, and/or discounts received solely through the use of Defendants' Programs, and not the result of combining Defendants' Program with a health insurance program or any other program, or as a result of the consumer obtaining assistance or coverage from any other program, including but not limited to, Medicaid. This provision does not prohibit Defendants from using the testimonial if the customer was able to take advantage of another program or obtain other assistance or coverage as a direct result of the Defendants' advice, recommendations, guidance or other assistance;

(e) The customer giving the testimonial has not received or been offered anything of value, including but not limited to cash, gift cards, or a refund, in exchange for their testimonial;

(f) All representations included in the testimonial are accurate representations of the consumer's overall experience with Defendants' Program, and the consumer's complete file, including but not limited to, the consumer's full name, address, and telephone number, signed contract for Defendants' Program, repriced, reduced, audited, and negotiated maternity bills and costs, correspondence between the consumer and Defendants, correspondence between the consumer's maternity care providers,

any notes made by Defendants regarding the consumer, and the full text of the consumer's testimonial, are retained by Defendants for at least three years after the last use of the testimonial; and

(g) Testimonials are used solely in marketing, solicitations, and any other representations regarding the service for which the testimonial was originally given, and not in marketing, solicitations, or any other representations of any other product or service marketed or sold by any of the Defendants.

(h) If Defendants use testimonials in marketing or advertising, they must verify, possess and maintain adequate substantiation that the person providing the testimonial has actually achieved the stated or represented results. Defendants must also verify, possess and maintain adequate substantiation of the typical results a consumer can generally expect to achieve and the advertisement must clearly and conspicuously disclose that information.

39. Using examples of medical bills or "claims" in which the original billed amount has been reduced, unless:

(a) All reductions in the medical bills or "claims" are due solely to Defendants' Programs;

(b) The method employed by Defendants to reduce the medical bill or "claim" is clearly and conspicuously disclosed; and

(c) The issuer of the medical bill or "claim" has accepted the reduced amount as payment in full for the billed good or service.

40. Representing that there are limited spaces or limited enrollment opportunities available to consumers unless:

(a) Enrollment limitations are set by Defendants for each program or service offer for sale to consumers on no less than a monthly basis;

(b) Enrollment limitations are based upon Defendants' ability to provide the program or service to a certain defined number of enrollees;

(c) Each time a representation is made to a consumer regarding limited spaces or limited enrollment opportunities for any program or service offered for sale by Defendants, Defendants clearly and conspicuously disclose the total number of spaces in the program or service, and the number of spaces still available; and

(d) When all enrollment spaces for a certain time period have been filled, Defendants cease selling the program or service.

41. Using testimonials, data, representations of reductions, discounts, negotiations, audits, or any other facts or information of any kind from any of Defendants' legal entities, to market for, solicit customers for, advertise for, or in any way describe or represent any other legal entity controlled by, affiliated with, partnered with, or in any other way associated with, Defendants.

42. Representing that Defendants' Program includes a team including:

(a) Maternity specialists;

(b) Nurses;

(c) Doctors;

(d) Administrators;

(e) Claims specialists;

(f) Audit specialists;

(g) Coding specialists; or

(h) Negotiators; unless Defendants in fact have current employees or contractors who are qualified to perform those positions and in fact provide the services associated with those positions for all of Defendants' Program participants.

43. Marketing or selling a discount health care card program in Texas, including but not limited to, representing that medical costs will be reduced by accessing prices negotiated by preferred provider networks, unless Defendants have registered the program as a discount health care card program in Texas, the registration is current, and Defendants are operating in compliance with the law, pursuant to TEX. HEALTH & SAFETY CODE § 76.001 *et seq.*, or, after September 1, 2009, the Texas Insurance Code, Subtitle C, Title 5, Chapter 562, Section 562.001 *et seq.*

44. Making oral representations to consumers that are contradicted or undermined by written or taped disclosures or representations.

45. Failing to obtain a commitment to comply with the terms of this injunction from any person or entity marketing Defendants' Programs.

46. Failing to take appropriate remedial and disciplinary action when Defendants become aware that an employee, agent or representative of Defendants is failing to comply with the terms of this injunction.

IV. RESTITUTION FOR CONSUMERS AND PAYMENT OF ATTORNEYS' FEES TO THE STATE OF TEXAS

47. JUDGMENT IS HEREBY ENTERED AGAINST DEFENDANTS jointly and severally for attorney's fees and restitution as follows:

(a) Defendants shall pay TWO HUNDRED AND TWENTY FIVE THOUSAND DOLLARS ($225,000.00) to the State of Texas for its attorneys' fees and investigative costs and such amount shall be payable according to the following schedule and instructions:

i. SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS ($62,500.00) shall be paid on or before August 13th, 2010;

ii. SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS ($62,500.00) shall be paid on or before November 15th, 2010; and

iii. ONE HUNDRED THOUSAND DOLLARS ($100,000.00) shall be paid on or before February 15th, 2011.

iii. Payments shall be in the form of a money order or certified check made payable to the Office of the Attorney General of Texas, bearing the number AG No. 062307475 on its face, and shall be delivered on or before the due date to the Office of the Attorney General, Consumer Protection and Public Health Division, 300 West 15th Street, William P. Clements Building, 9th Floor, Austin, TX 78701.

(b) Defendants are ordered to pay restitution to consumers according to the following criteria, schedule and instructions:

i. Within 30 days of the entry of this judgment, Defendants shall begin to make restitution to all consumers who have filed a complaint regarding Defendants' Program with the Office of the Texas Attorney General or the Better Business Bureau on or before the date of entry of the Judgment. Defendants shall refund to these consumers all monies previously paid to Defendants including enrollment fees. All such refunds must be remitted by Defendants to consumers on or before September 30th, 2010. Within 10 business days of September 30th, 2010, Defendants shall provide the Office of the Texas Attorney General with a Restitution Report which shall include the following information with respect to each complaining consumer:

A: The name, address, telephone number and email address of the consumer;

B. The product or service purchased by the consumer;

C. The date of purchase;

D. The total amount paid by the consumer for the product or service;

E. The date(s) on which the consumer made payment or payments to Defendants;

F. The date on which the refund was issued;

G. The amount of refund requested in payment by the consumer and the total refunded; and

H. The form or method of refund (check, chargeback to credit card, or deposit to bank account).

(c) Effective October 1, 2010, Defendant shall make restitution to consumers who file complaints with the Office of the Texas Attorney General after the date of the entry of Judgment regarding the Defendants' Program (including Maternity Advantage, Maternity Card and Maternity Advocate) in which the consumer alleges any of the following:

i. Defendants misrepresented the benefits of Defendants' Program;

ii. Defendants misrepresented that the consumers' doctor or hospital would work with Defendants' Programs;

iii. The consumer's doctor or hospital refused to accept Defendants' audit or reduction of the consumer's bill;

iv. Defendants failed to acknowledge a consumer's cancellation, and continued to collect fees from the consumer;

v. Defendants failed to honor the Certificate of Guarantee;

vi. Defendants instructed consumers not to preregister with the hospital where they intended to deliver the baby;

vii. Defendants represented that Defendants' Programs are licensed/registered Provider Access Organization;

viii. Defendants represented that Defendants' Program contracted with a network specifically developed for its customers;

ix. Defendants represented that doctors' visits are part of Defendants' Program;

x. Defendants failed to disclose a $250.00 cancellation fee assessed if the consumer cancelled before the entire 12 month enrollment had passed;

xi. Defendants failed to disclose material terms and conditions relating to the 100% satisfaction, Ironclad guarantee, i.e., the Certificate of Guarantee;

xii. Defendants failed to respond to consumer inquiries regarding the products or services supplied them under their agreement with Defendants.

(d) The refunds of all monies paid by consumers, including enrollment fees, required by the preceding paragraph (c) shall be remitted by Defendants to consumers within thirty days of receipt of such complaints. Defendants shall also-within thirty days of receipt of a complaint-provide the consumer and the Office of the Texas Attorney General with a written response specifically addressing the allegations of the complaint. Provided, however, that if Defendants shall have no obligation to make a refund to a consumer if within thirty days from receipt of the complaint, they

provide documentation to the Office of the Texas Attorney General which demonstrates that the consumer did not in fact make any payment of any monies to Defendants, or that Defendants previously have returned all monies paid by the consumer to Defendants.

V. CIVIL PENALTIES

48. **JUDGMENT IS FURTHER ENTERED JOINTLY AND SEVERALLY AGAINST DEFENDANTS** and in favor of the State of Texas for civil penalties in the amount of Two Hundred and Seventy Five Thousand Dollars ($275,000.00) These civil penalties shall constitute a civil fine or penalty to and for a governmental unit and are not compensation for actual pecuniary loss. It is further ordered that if on or before April 15th, 2011, Defendants have made full payment to the State of Texas of attorney's fees ordered in this case, the State of Texas shall consider the monetary portion of this Final Judgment satisfied in full unless the State has evidence that this Final Judgment should be reopened as outlined below. The State of Texas may then reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of Defendants.

49. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the State's agreement to and the Court's approval of this Final Judgment are premised upon the truthfulness and completeness of the financial information provided to the State of Texas by Defendants which contained material information relied upon by the State of Texas in negotiating and agreeing to the terms of this Final

Judgment and Defendants' assurances regarding making restitution to consumers as ordered herein and their agreement to fully comply with the injunctive and record keeping provisions of this Final Judgment.

50. **IT IS FURTHER ORDERED** that if the State of Texas has evidence that Defendants have failed to make full payments to the State of Texas of attorney's fees ordered in this case, provided false or incomplete financial information to the State of Texas, failed to make restitution to consumers as ordered herein or failed to comply with the injunctive and record keeping provisions of this Final Judgment, the State of Texas may reopen this Final Judgment for the sole purpose of allowing the State of Texas to modify the monetary liability of Defendants. If there is a judicial determination that Defendants provided false or incomplete financial information to the State of Texas, failed to make restitution to consumers as ordered herein or failed to comply with the injunctive and record keeping provisions of this Final Judgment, the Court shall reinstate the suspended judgment against Defendants, in favor of the State of Texas, in the amount of Two Hundred and Seventy Five Thousand Dollars ($275,000.00). All other terms of this Final Judgment shall remain in full force and effect unless otherwise ordered by the Court. For the purposes of reopening or enforcing this Final Judgment, Defendants waive any right to contest any of the allegations set forth in Plaintiff's Original Petition filed in this matter.

51. Prior to seeking such a judicial finding of non-compliance, the Attorney General will notify Defendants in writing of such failure to comply, and Defendants shall

have ten (10) business days from receipt of such written notice to provide a written response to the Attorney General. The response shall include:

(a) A statement sworn upon penalty of perjury describing in detail the evidence which demonstrates that Defendants are in full compliance with the Judgment;

(b) A statement sworn upon penalty of perjury describing in detail why the violation occurred, a statement of all actions taken by Defendants to cure the violation, including but not limited to, restitution to all consumers harmed by the violation, and a statement of all actions taken by Defendants to ensure that additional violations will not occur in the future.

52. All notices to Defendants under this provision shall be sent by certified mail to attorney for Defendants:

TERRY L. SCARBOROUGH
Hance Scarborough, LLP
111 Congress Avenue, Suite 500
Austin, Texas 78701

53. Nothing in this Section V shall be construed to limit the authority or discretion of the Office of the Texas Attorney General to act in the public interest, or to enforce applicable state laws or the terms of this Judgment.

VI. COMPLIANCE AND RECORDKEEPING REQUIREMENTS

54. IT IS FURTHER ORDERED ADJUDGED AND DECREED that Defendants shall create and maintain the following records, which must be retained for at least three years from the date of their creation and shall provide such records to

the Office of the Attorney General on a quarterly basis on a form to be prescribed by that office:

(a) Records accurately reflecting: the name, address, and phone number of each person employed in any capacity by Defendants, including as an independent contractor; that person's job title or position; the date on which the person commenced work; and the date and reasons for his or her termination, if applicable;

(b) Records accurately reflecting: the number of consumers to whom Defendants provided any good or service; and the number of consumers who paid fees in order to obtain the good or service, and the amount of each such payment;

(c) Customer files containing the Service Agreements, audio recordings of Authorization, and all notices required by preceding Paragraph 28; the names, addresses, phone numbers, and fees paid by each customer to Defendants; and any other documents or records pertaining to the goods or services provided by Defendants to the customer;

(d) Complaints and refund requests (whether sent directly to Defendants by consumers or sent indirectly through any third party such as a regulator, the Better Business Bureau or an attorney acting on behalf of a consumer) and any responses to those complaints and requests;

(e) All mailing addresses, addresses, telephone numbers and web site addresses of entities in which Defendants have an ownership interest or serve as officers or directors and where such business is engaged in or assists others engaged in the advertising, promotion, offering for sale, sale or distribution or provision of goods and/or services as described in paragraph 12 of the Definitions in this Judgment;

(f) Any records that Defendants are required to keep by any provision of this Judgment including, but not limited to, the written contractual agreements required in the Injunction section of this Judgment; and

(g) Copies of all manuals, sales scripts, training materials, advertisements, or other marketing materials.

(h) For a period of five (5) years from the date of entry of this Order, Defendants Bouren and McDonald shall notify the Attorney General of the following:

i. Any changes in such Defendant's residence, mailing addresses and telephone numbers, within 15 days of the date of such change;

ii. Any changes in such Defendant's employment status (including self employment) and any change in such Defendant's ownership in any business entity, within 15 days of the date of such change. Such notice shall include the name

and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment.

55. IT IS FURTHER ORDERED that all reports required by this Judgment shall be delivered to the Office of the Attorney General by overnight courier or by certified or registered mail to the following address:

Consumer Protection and Public Health Division
Nanette DiNunzio, Assistant Attorney General
D. Esther Chavez, Deputy Chief
300 West 15th Street, 9th Floor
Austin, TX 78711

56. Defendants' first quarterly report for the information required pursuant to the preceding paragraph 54 is due on November 1, 2010 and thereafter reports shall be due on the first day of each quarter.

57. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that within 60 (sixty) days of entry of this judgment, Defendants, in furtherance of compliance with this judgment shall:

(a) Adopt and implement written policies and procedures to assure compliance with the terms of this Judgment; and

(b) Provide a copy of this Judgment to all officers, directors, employees, agents, servants, successors and assigns who have responsibilities for performing the obligations outlined in this Judgment.

VIII. MISCELLANEOUS

58. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the state of Texas shall have all writs of execution and other process necessary to enforce this agreed final judgment and permanent injunction. Defendants, by their signatures below, hereby acknowledge notice of this permanent injunction and acceptance of same; therefore, no writ need be issued.

59. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all costs of Court incurred in this case are taxed against the parties incurring same.

60. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendants' actions or business activities.

61. Nothing in this Judgment shall be construed to authorize or require any action by Defendants in violation of applicable federal, state or other laws. In the event that any law or regulation is enacted or adopted by the federal government or by the State of Texas which is inconsistent with the terms of this Judgment, such that Defendants cannot comply with both the statute or regulation and the terms of this Judgment, the requirements of such law or regulation, to the extent of such inconsistency and after written notice by Defendants, shall replace any provision contained herein so that compliance with such law or regulation shall be deemed compliance with this Judgment provided that the remaining terms of the Judgment not affected by such laws, rules, or regulations shall remain in full force and effect.

62. **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that all relief not expressly granted herein is denied.

SIGNED this 5th day of August, 2010.

PRESIDING JUDGE

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:
GREG ABBOTT
Attorney General of Texas

C. ANDREW WEBER
First Assistant Attorney General

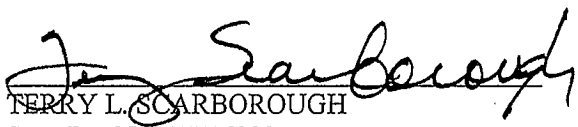
DAVID S. MORALES
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA
Chief, Consumer Protection and Public Health Division

NANETTE DINUNZIO
State Bar No. 24036484
Assistant Attorney General
Office of the Attorney General
Consumer Protection and Public Health Division
P.O. Box 12548
Austin, Texas 78711
(512) 475-4654 (telephone)
(512) 477-4544 (facsimile)

ATTORNEYS FOR THE STATE OF TEXAS

AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:



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ATTORNEY FOR DEFENDANTS
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